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11 ARIZONA SUPERIOR COURT
12 IN AND FOR THE COUNTY OF MARICOPA COUNTY

13 STATE OF ARIZONA, *ex rel.*,
14 STEPHEN A. OWENS, Director, Arizona
15 Department of Environmental Quality,

16 Plaintiff,

17 v.

18 HONEYWELL INTERNATIONAL, INC.,
19 a Delaware corporation,

20 Defendant.
21

Case No: CV2004-013146

COMPLAINT

(Non-Classified Civil)

22 JURISDICTION AND VENUE

23 1. The Court has jurisdiction over the subject matter of this action pursuant to A.R.S.
24 §§ 49-287, 49-924 and 49-1013.
25

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JUL 09 2004



MICHAEL W. JONES, CLERK
DEPUTY CLERK

1 2. Defendant Honeywell International, Inc. ("Honeywell") is a Delaware corporation
2 doing business in the State of Arizona. The Defendant is a person as defined in A.R.S.
3 § 49-921. The Court has personal jurisdiction over Defendant Honeywell because it
4 regularly engages in business in the State of Arizona and the acts complained of occurred in
5 the State of Arizona.

6 3. Venue is proper in Maricopa County pursuant to A.R.S. §§ 49-287(I), 49-924 (B), and
7 49-1013(F).

8 4. Venue is proper in Maricopa County pursuant to A.R.S. §§ 49-287(I), 49-924 (B), and
9 49-1013(F).

10 LEGAL AUTHORITY

11 5. Plaintiff's relator, Stephen A. Owens, is the Director of the Arizona Department of
12 Environmental Quality ("ADEQ").

13 6. The Defendant, Honeywell International, Inc. owns and operates a facility located at
14 111 South 34th Street in Phoenix, Arizona, ("the Facility").

15 7. Title 49, Chapter 5 of the Arizona Revised Statutes regulates the generation, treatment,
16 storage, disposal and management of hazardous waste within the State of Arizona. A.A.C.
17 R18-8-260, R18-8-261, R18-8-262, R18-8-263, R18-8-268 and R18-8-270 were
18 promulgated pursuant to A.R.S. § 49-922(A). The rules incorporate by reference Title 40 of
19 the Code of Federal Regulation ("C.F.R.") Parts 260, 261, 262, 263, 268 and 270.

20 8. Arizona Administrative Code R18-8-261 identifies wastes that are considered
21 "hazardous."

22 9. Arizona Administrative Code R18-8-262 establishes standards for generators of
23 hazardous waste. Among other things, it requires generators of hazardous wastes to test or
24 "characterize" those wastes to determine how to properly store, treat, transport or dispose of
25 them, to track those wastes during their transport through manifests and to maintain records
26 and provide reports to the appropriate regulatory agency of the generation and transport of

1 the hazardous wastes on a periodic basis.

2 10. Arizona Administrative Code R18-8-268 identifies hazardous wastes that are
3 restricted from land disposal. Section 268.7 requires a generator of a hazardous waste to
4 determine if the waste has to be treated before it can be land disposed.

5 11. Title 49, Chapter 6 of the Arizona Revised Statutes regulates underground storage
6 tanks located within the State of Arizona.

7 12. Defendant Honeywell is an "owner" of the underground storage tanks located at the
8 Facility as defined in A.R.S. § 49-101.01(A).

9 13. Defendant Honeywell is also the "operator" of the underground storage tanks located
10 at the Facility, as defined in A.R.S. § 49-1001(9), since, at times relevant to this Complaint,
11 Defendant Honeywell was the person in control of, or having responsibility for, the day-to-
12 day operation of an underground storage tank.

13 14. The owner and operator of an underground storage tank must notify ADEQ of each
14 release or suspected release of a regulated substance from a tank as soon as practicable, but
15 no later than, 24 hours after the release or suspected release is detected. A.R.S. § 49-
16 1004(B).

17 15. A written report of the release must be submitted to ADEQ within 14 days. A.R.S. §
18 49-1004(C).

19 16. The owner and operator of an underground storage tank shall take corrective action in
20 response to the release of regulated substances from the tank. A.R.S. § 49-1005(B).

21 17. The liabilities and responsibilities for releases of regulated substances imposed on
22 owners and operators of underground storage tanks shall apply even if the conduct that
23 resulted in the release or the release itself occurred before August 13, 1986. A.R.S.
24 § 49-1016(B).

25 18. Title 49, Chapter 2, Article 5 of the Arizona Revised Statutes provides for remedial
26 actions of hazardous substances as may be necessary to prevent, minimize or mitigate

1 damage to the public health or welfare or the environment which may otherwise result from
2 a release or threat of release of a hazardous substance.

3 19. Pursuant to §§ 49-282 and 49-292 of the Arizona Revised Statutes, on September 19,
4 1999, ADEQ and Defendant Honeywell entered into an Administrative Order on Consent
5 ("ADEQ Order"), whereby Defendant agreed to undertake a focused remedial investigation
6 of soils and groundwater at the Facility for the purpose of identifying and characterizing
7 potential or known sources of releases of chlorinated volatile organic compounds at the
8 Facility and determining the nature and extent of chlorinated VOC contamination at and
9 emanating from the Facility.

10 BACKGROUND

11 I. Description of the Facility

12 20. Defendant Honeywell, or its predecessors-in-interest including, but not limited to,
13 AlliedSignal Aerospace Company, Allied-Signal, Inc., The Garrett Corporation, Garrett
14 Engine Division, Garrett Turbine Engine Company and Garrett Airlines Services Division
15 (hereinafter, collectively referred to as "Honeywell"), has owned and operated a facility that
16 manufactures, tests, overhauls and repairs jet engines located at 111 South 34th Street ("the
17 Facility" or the "34th Street Site") in Phoenix, Arizona near Phoenix Sky Harbor
18 International Airport since 1952. At numerous buildings, test cells or booths and related
19 structures within the Facility, Defendant Honeywell utilized various petroleum products,
20 including Jet A, JP-10 and JP-4 fuels. Defendant Honeywell stored these petroleum
21 products in underground tanks and containers from the 1950s to the present.

22 21. Area 1 of the Facility consisted of administrative offices, manufacturing facilities,
23 plating operations, testing facilities and storage areas. Area 2 of the Facility consisted of
24 eleven buildings containing engine assembly and testing facilities, known as "test cells."
25 Two of the buildings, identified as Buildings 203 and 204, alone housed 24 of the test cells.
26 Building 202 contained the large altitude cold chamber ("LACC"), designed to test jet

1 engines at high altitudes. The LACC was the test cell that simulated the temperatures jet
2 engines would experience at high altitudes. To achieve these temperatures, the LACC used
3 and recirculated 18,000 gallons of a trichloroethene¹-based ("TCE") refrigerant. TCE was
4 also used in Building 202 for degreasing and cleaning operations and was occasionally used
5 to clean the floors.

6 22. The test cells in Buildings 203 and 204 were originally designed so that any runoff,
7 such as excess fuel, oil and degreasing fluids, would be directed into shallow dry wells
8 beneath and adjacent these buildings through a system of trenches. In the 1970s, the dry
9 wells were replaced with a system of sumps, which were also located beneath and adjacent
10 to a number of the Area 2 buildings.

11 23. Defendant Honeywell utilized solvents containing various chlorinated volatile organic
12 compounds ("VOCs") such as TCE, trichloroethane ("TCA") and chlorofluorocarbons
13 ("freons") to degrease, clean or cool engine parts at the Facility from the mid 1950s through
14 approximately 1995.

15 24. TCE and TCA biodegrade to become 1,2-dichloroethene (1,2-"DCE") dichloroethene
16 (1,1-"DCE"); and 1,1-dichloroethane (1,2-"DCA"), respectively. Vinyl chloride is a
17 biodegradation product of both TCA and TCE.

18 25. TCE, TCA, DCE, DCA and freons are all hazardous substances according to A.R.S.
19 §49-201(18). TCE, TCA, DCE and DCA are suspected human carcinogens. Vinyl chloride
20 is a known human carcinogen. (These substances will collectively be referred to hereinafter
21 as "chlorinated VOCs.")

22 26. Jet fuels have been found directly under the Facility, as a free phased layer floating on
23 top of the ground water (hereinafter referred to as "floating fuel"). This layer of floating fuel
24 is contaminated with chlorinated VOCs. The groundwater beneath is also contaminated with
25 dissolved jet fuel constituents and chlorinated VOCs.

26 ¹ Prior to the 1980s, trichloroethene was known as trichloroethylene.

1 II. Contamination of the Facility

2 27. Defendant Honeywell has admitted that certain underground storage tanks ("USTs")
3 located at the Facility were removed before the State UST regulations went into effect in
4 1987. Some of the tanks removed prior to 1987 were observed by Defendant Honeywell's
5 employees, contractors or agents to be cracked or to have leaked or a "strong hydrocarbon
6 odor" was detected upon their removal.

7 28. Once the "tank removal project" was completed in 1986, Defendant Honeywell began
8 a second "removal" project to address various sumps underneath the Facility. These sumps
9 were used to hold, store and contain chlorinated VOCs used in engine testing-related
10 activities at the Facility. Sumps were also used to hold, store and contain used oils, water
11 and other waste materials. The sumps were made of concrete, a porous material. They were
12 not lined and not designed to hold liquid hazardous wastes.

13 29. The Sump Removal Project was conducted in 1987 and 1988. Upon its completion, a
14 "Sump Removal Project Memorandum" ("Sump Memo") was generated by Defendant
15 Honeywell and forwarded to ADEQ. While the Sump Memo did document the field work
16 conducted to remove the sumps, the Sump Memo did not include all sampling and analytical
17 results Defendant Honeywell had in its possession at the time. These sampling results
18 showed that some of the wastes remaining in the bottom of these sumps were hazardous
19 waste and that some soils removed from beneath and around the sumps showed elevated
20 level of chlorinated VOCs.

21 30. On August 22, 1988, two underground fuel lines carrying Jet A and "special" Jet A
22 fuels ruptured as a result of a pavement removal job near Building 211. This rupture caused
23 a release of jet fuel but the release was not reported to ADEQ at the time.

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25 31. In February 1991, Defendant Honeywell submitted a "Draft Phase I Record Search
26 Report" to ADEQ. The purpose of this Phase I Report was to search "the records of Allied

Signal and its predecessor, The Garrett Corporation, relating to the generation, storage, treatment and disposal of hazardous substances at the subject AlliedSignal facilities." The Facility at 111 South 34th Street was one of the AlliedSignal facilities studied.

32. The Phase I Report represented that these sumps at the Facility "never received" chemical wastes, that they were "intended for the collection of non-hazardous waste" and that "no halogenated solvent contamination had been discovered in any of the numerous soil samples obtained from the Site" to date. These statements were false.

33. Between March 22, 1990 and January 2, 1994, used oil (*e.g.*, oil that had previously been used to lubricate or operate jet engines) and jet fuel were collected in the sumps as part of a "routine process of collection of hydrocarbons for final disposition as boiler feed." The used oil and jet fuel was then blended in a "boiler fuel tank" in Building 202.

34. The mixture of jet fuel and used oil containing chlorinated VOCs was used as boiler feed or fuel and was burned in on-site boilers to power the LACC and/or related test cells prior to January 2, 1994.

III. Response Actions at the Facility

35. To respond to releases of chlorinated VOCs from this Facility and from other facilities in the general area, the United States Environmental Protection Agency ("EPA") placed the Motorola 52nd Street Superfund Site ("the M52 Site") on the NPL on October 4, 1989. Within the boundaries of the M52 Site are the Facility that is the subject of this Complaint, as well as the regional groundwater from McDowell Road to the north, the old Cross-Cut Canal at 46th Street to the east, 20th Street to the west and Lower Buckeye Road to the south.

36. Defendant Honeywell received a general notice letter from EPA in November 1992. The letter informed the company that EPA considered Defendant Honeywell a "potentially responsible party" and as a person liable to perform or pay for the cost of performing any

1 response action defined in Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and
2 9607(a) for actual or threatened releases of hazardous substances at the M52 Site.

3 37. In February 1992, Defendant Honeywell was also named as a defendant in a private
4 toxic tort case involving the M52 Site. The suit alleged that Honeywell and other defendants
5 improperly disposed of chlorinated VOCs, including TCE, into groundwater at or near the
6 M52 Site and that this disposal caused property devaluation and personal injury to the
7 individual plaintiffs.

8 38. In July 1998, ADEQ requested that Defendant Honeywell conduct a soils and
9 groundwater investigation of the Facility for the purpose of identifying potential sources of
10 chlorinated VOCs releases.

11 39. ADEQ issued Defendant Honeywell an Information Request pursuant to Section 288
12 of the WQARF regulations on July 29, 1998. In this request, ADEQ specifically asked for
13 all documents related to the "removal and installation of underground storage tanks and
14 sumps which had not otherwise been provided to ADEQ." ADEQ reiterated this request for
15 UST and sump removal data in an amended information request issued to Defendant
16 Honeywell on August 29, 1998.

17 40. On November 30, 1998, EPA issued an amended Unilateral Administrative Order
18 ("the EPA Order") that directed Motorola and Honeywell, jointly and severally liable parties
19 at the M52 Site, to construct a groundwater extraction and treatment system to clean up
20 contaminated groundwater and to conduct two years of operation and maintenance of the
21 system. The groundwater remedy for the M52 Site is designated Operable Unit #2 ("OU2").
22 The estimated cost to fully remediate OU2 of the M52 Site is \$40 to 50 million.

23 41. In early 1999, Motorola and Honeywell decided to enter into a private allocation
24 process to determine each party's proportionate share of liability.

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1 42. EPA delegated the authority to act as lead agency in conducting a site characterization
2 of the Facility to ADEQ.

3 43. Defendant Honeywell thereafter commenced the Facility investigation. As part of
4 this initial investigation, Defendant Honeywell constructed a number of groundwater
5 monitoring wells. Two monitoring wells, identified as Wells ASE-19A and ASE-20A, were
6 installed in the vicinity of Building 202 and 203 for the purpose of detecting chlorinated
7 VOCs beneath Area 2 of the Facility.

8 44. Defendant Honeywell drilled and constructed the monitoring wells in Area 2
9 beginning on December 29, 1998. While Defendant Honeywell admits that "hydrocarbon
10 odors" were smelled during their drilling and that hand-held meter readings registered the
11 presence of petroleum products, these findings were not reported to ADEQ at the time.

12 45. On April 12-15, 1999, on May 18, 1999 and again on June 1, 1999, Defendant
13 Honeywell commissioned sampling events for certain monitoring wells, including Wells
14 ASE-19A and 20A, at the Facility. The samples collected during these events showed that
15 the floating fuel under the Facility was a mixture of Jet A, JP-10 and JP-4 fuels. Defendant
16 Honeywell claims it verbally informed John Kivett, the ADEQ hydrologist working on the
17 M52 Site, of the presence of the floating fuel beneath the Facility on May 3, 1999.
18 However, sampling results that showed that the floating fuel was contaminated with elevated
19 levels of chlorinated VOCs were not disclosed to anyone at ADEQ, including Mr. Kivett, at
20 the time.

21 46. A written report of certain sampling data collected in the spring and early summer of
22 1999 was sent to Defendant Honeywell on June 15, 1999 by Hargis + Associates, Inc. The
23 June 1999 report confirmed the presence of chlorinated VOCs in soil and water samples
24 taken from or near Wells ASE-19A and ASE-20A at Facility. These results were also not
25 disclosed to ADEQ at the time.

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1 47. At the same time Defendant Honeywell was confirming the presence of the
2 chlorinated VOCs in the floating fuel beneath the Facility, it was negotiating the ADEQ
3 Order. The purpose of the ADEQ Order was to conduct an investigation into the nature,
4 extent and potential sources of chlorinated VOCs at or emanating from the Facility. During
5 the course of these negotiations, however, Defendant Honeywell continued to hide the fact
6 that it had taken samples in April, May or June, 1999 and that the results of these 3 sampling
7 efforts confirmed the presence of chlorinated VOCs in the floating fuel and ground water
8 beneath the Facility from ADEQ.

9 48. On September 19, 1999 ADEQ and Honeywell entered into the ADEQ Order.

10 49. Two days after the ADEQ Order was signed, Defendant Honeywell sent a letter to
11 ADEQ, informing ADEQ that although "hydrocarbon products were not observed during the
12 drilling or construction of either [Well ASE-19A or 20A], . . . the presence of such products
13 were suspected during the drilling due to hydrocarbon odors at ASE-19A and PID readings
14 at both the ASE-19 and ASE 20 well cluster sites." Honeywell also informed ADEQ that
15 "[b]ecause of the suspected presence of fuel products in these wells, [Honeywell] has taken
16 steps to identify the nature, location, and quantity of the products." Honeywell further
17 assured ADEQ that remediation of the floating fuel could be accomplished by simply
18 removing it and that once-removed, the "extracted liquid fuel product will be transferred to a
19 holding tank and handled and disposed of according to all applicable rules and regulations."
20 Despite these assurances, Honeywell hid the fact that the floating fuel was contaminated
21 with chlorinated VOCs and the "recovered fuel" was handled and disposed of improperly.

22 50. The ADEQ Order identified a number of activities and deliverables that Defendant
23 Honeywell was required to complete as part of its Facility investigation. One of the required
24 deliverables was a Research Report. The Research Report was to specifically provide "a
25 narrative history of Facility operations based on historical research; identification of
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1 potential source areas known or suspected by Honeywell; and recommendations for future
2 investigations of such source areas.”

3 51. In conjunction with the Research Report, Defendant Honeywell was also required to
4 submit a Potential Source Areas Investigation Work Plan (“the Work Plan”). The Work Plan
5 was designed to be the blueprint for conducting a “soils and groundwater investigation of the
6 potential source areas” and was supposed to be developed “based on an analysis of all
7 currently existing data as well as information contained in the Research Report.”

8 52. Defendant Honeywell submitted the Research Report to ADEQ on December 20,
9 1999. The Research Report omitted the fact that chlorinated VOCs had been found in the
10 floating fuel and ground water beneath the Facility. The Research Report also omitted any
11 qualitative and quantitative information already in Defendant Honeywell’s possession
12 regarding the chlorinated VOCs found in the sumps in 1987 or 1988. Nonetheless,
13 concurrent with its submission, Defendant Honeywell certified that the information
14 contained in the Research Report was true, accurate and complete.

15 53. The Potential Source Areas Investigation Work Plan was submitted to ADEQ on the
16 same day the Research Report was submitted – December 20, 1999.

17 54. On January 18 and 19, 2000, the Director of ADEQ requested that Defendant
18 Honeywell provide detailed information, including a “fingerprint analysis” of the
19 constituents of the floating fuel, so that ADEQ could determine whether to approve
20 Defendant Honeywell’s suggested cleanup approach.

21 55. On February 28, 2000, ADEQ received a report from Defendant Honeywell, prepared
22 by Honeywell’s contractor Trillium, Inc. This report contained data that only identified the
23 types of jet fuels present in the floating fuel layer beneath the Facility. Although data
24 confirming the presence of chlorinated VOCs was in Defendant Honeywell’s possession –
25 the results of the samples taken during the April - June 1999 sampling events -- this data was
26 not included in the version of the report given to ADEQ. ADEQ learned later that Trillium,

1 Inc. had produced a version of this report containing both types of data – jet fuel and
2 chlorinated VOC analysis – had been produced by Trillium, Inc. for Defendant Honeywell as
3 early as September 29, 1999. Further, Defendant Honeywell failed to disclose to ADEQ the
4 fact that the critical data documenting the presence of chlorinated VOCs had been removed
5 or redacted from this report.

6 56. Following a review of the redacted February 18, 2000 Trillium Report supplied to it
7 by Defendant Honeywell, ADEQ granted permission to Defendant Honeywell to dispose of
8 the floating fuel.

9 57. Between April 12, 2000 and August 21, 2000, Defendant Honeywell removed some
10 of the floating fuel from underneath the Facility. It arranged for the disposal of this floating
11 fuel with Thermo Fluids, Inc., a Phoenix-based company. Thermo Fluids received the
12 recovered fuel from Defendant Honeywell and blended it with other petroleum products to
13 be re-sold as an industrial fuel. Defendant Honeywell, however, did not disclose to Thermo
14 Fluids that the recovered fuel was contaminated with chlorinated VOCs, requiring that the
15 fuel be managed as a hazardous waste.

16 58. On April 12, 2000, Trillium, Inc. produced a “revised” report which did contain the
17 sampling results from the April - June 1999 sampling events that showed the presence of
18 chlorinated VOCs in the floating fuel. This “revised” Trillium Report was not disclosed to
19 ADEQ at the time.

20 59. On August 14, 2000, Honeywell submitted its “Conceptual Site Model” to ADEQ. In
21 this Model, Defendant Honeywell, for the first time, disclosed that an analysis of floating
22 fuel had been conducted in 1999. However, Honeywell did not provide ADEQ the actual
23 results of these sampling efforts. Instead, Honeywell represented that the floating fuel
24 contained a “small amount of dissolved chlorinated VOCs.”

25 60. At the same time Defendant Honeywell was withholding the chlorinated VOCs data
26 from ADEQ, it maintained “an ongoing adversarial relationship with Motorola over issues

1 related to the Honeywell facility." In fact, these two parties were engaged in private
2 arbitration to determine how much each party would pay to cleanup the M52 Superfund Site.
3 Despite numerous discovery requests and exchanges of data related to each party's potential
4 contribution of chlorinated VOCs found at the M52 Site, Honeywell did not disclose the
5 chlorinated VOC data collected from the April 1999 – June 1999 sampling events, or either
6 the September 29, 1999 or the February 18, 2000 Trillium Report to Motorola until the week
7 of August 14, 2000.

8 61. When Honeywell did disclose the April, May and June 1999 sampling results to
9 Motorola, Motorola was provided with the complete, unredacted version of the February 18,
10 2000 Trillium Report. This was a different version from the Report provided to ADEQ in
11 February 2000. In fact, the version disclosed to Motorola in August 2000 was not forwarded
12 to ADEQ until October 2000.

13 62. In a letter dated September 20, 2000, Defendant Honeywell's counsel, Mr. David
14 Campbell of Osborn Maledon, admitted that although Defendant "Honeywell probably
15 learned there were VOCs in the fuel in late April or early May" of 1999, this information
16 was withheld from ADEQ because "the analysis of the VOCs in the floating fuel was
17 performed in anticipation of litigation" with other parties regarding the M52 Site.

18 63. On January 12, 2001, Defendant Honeywell submitted a "Floating Fuel Investigation
19 Report." This Report identified the specific activities and/or the underground storage tanks
20 or sumps from which Defendant Honeywell suspected the floating fuel and chlorinated
21 VOCs were released.

22 64. Defendant Honeywell has not begun to remove or otherwise remediate the floating
23 fuel beneath the Facility to date. Its most recent remedial plan anticipates it will take eight
24 (8) to ten (10) years to fully remediate the floating fuel beneath the Facility.

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1 VIOLATIONS

2 *Underground Storage Tank Violations*

3 65. Plaintiff realleges and incorporates by reference all allegations set forth in Paragraphs
4 1 through 64 of this Complaint.

5 66. Underground Storage Tank No. 203 was removed between 1972 and 1975.

6 67. At the time Tank No. 203 was removed from the Facility, a leak in the tank was
7 observed by Defendant Honeywell's employees and/or contractors.

8 68. On December 29, 1998, Honeywell's employees and/or contractors smelled
9 hydrocarbon odors when drilling Wells ASE 19A and 20A. Well ASE 19A was drilled
10 approximately 245 feet hydrologically downgradient of Tank No. 203's former location.
11 At the time, it was the monitoring well screened at the level of the floating fuel which was
12 closest to Tank 203's former location

13 69. The detection of the hydrocarbons odors when drilling these wells, and the earlier
14 observation and knowledge of a leak from Tank 203, should have caused Defendant
15 Honeywell to know or suspect a release of a regulated substance from Tank No. 203.

16 70. The information that Tank 203 was observed to have been leaking upon its removal
17 was not disclosed to ADEQ until January 12, 2001 – some 26 years after the leak was
18 observed – in its "Floating Fuels Investigation Report."

19 71. Almost 2 years elapsed between the time Defendant Honeywell first verbally reported
20 the floating fuel to ADEQ and the time when information attributing releases from this tank
21 as a potential source of a release was disclosed to ADEQ.

22 72. A "generic" 14-day report, covering all releases of "jet fuel" not previously reported
23 to ADEQ, was submitted to ADEQ on April 16, 2002.

24 73. Underground storage Tanks No. 205, 207 and 211 were removed as part of the "tank
25 removal project" in 1986.

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1 74. At the time Tanks No. 205 and 207 were removed from the Facility, a leak in one of
2 the tanks, most likely Tank 207, was observed by Defendant Honeywell's employees and/or
3 contractors.

4 75. On December 29, 1998, Honeywell smelled "hydrocarbon odors" when drilling Wells
5 ASE 19A and 20A. Well ASE-19A is located directly in the "tank pit" which held former
6 Tanks 205 and 207. These tanks held jet fuels prior to their removal from the Facility.

7 76. The detection of the hydrocarbons odors when drilling the wells in the "tank pit," and
8 the earlier observation and knowledge of a leak from at least one of the tanks, should have
9 caused Defendant Honeywell to know or suspect a release of a regulated substance from
10 Tank No. 205 or 207.

11 77. Defendant Honeywell did disclose the presence of the floating fuel verbally to an
12 employee of ADEQ on May 3, 1999. The information that one of the tanks in the "tank pit"
13 was observed to have been leaking upon its removal was not disclosed to ADEQ until
14 January 12, 2001 – 15 years after the leak was observed and more than 2 years after
15 Defendant Honeywell discovered floating fuel below the Facility.

16 78. A 14-day report was submitted to ADEQ for this release on October 27, 2000.

17 79. On August 22, 1988, two (2) underground fuel lines were ruptured near Building 211.
18 The rupture of these underground fuel lines was not reported to ADEQ at the time. Instead,
19 Defendant Honeywell waited over 12 years to disclose this information to ADEQ.
20 Disclosure of the rupture of these fuel lines was provided to ADEQ on October 12, 2000.

21 80. A "generic" 14-day report, covering all releases of "jet fuel" not previously reported
22 to ADEQ, was submitted to ADEQ on April 16, 2002.

23 Count 1

24 81. Defendant Honeywell failed to notify ADEQ of any release or suspected release of a
25 regulated substance from Tank No. 203 within 24 hours after the release or suspected release
26 is detected as required by A.R.S. §49-1004(A). This violation continued for 125 days.

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1 occurred before August 13, 1986, this violation continued from July 1, 1987, when the UST
2 regulations became effective, to the present.

3 Count 7

4 87. Defendant Honeywell failed to notify ADEQ of any release or suspected release of a
5 regulated substance from the 2 underground fuel lines near Building 211 within 24 hours
6 after the release or suspected release is detected as required by A.R.S. §49-1004(A). This
7 violation continued for 4433 days.

8 Count 8

9 88. Defendant Honeywell failed to provide a written report within 14 days of when a
10 release or suspected release of a regulated substance from the 2 underground fuel lines near
11 Building 211 was detected, as required by A.R.S. §49-1004(C). This violation continued for
12 547 days.

13 Count 9

14 89. Pursuant to A.R.S. § 49-1013(D), Defendant Honeywell is subject to a civil penalty
15 not to exceed \$10,000 per day for each violation alleged in Counts 1 through 8.

16 *Hazardous Waste Violations*

17 90. Plaintiff realleges and incorporates by reference all allegations set forth in Paragraphs
18 1 through 90 of this Complaint.

19 91. Between April 12, 1999 and August 21, 2000, after Defendant Honeywell had
20 characterized the waste and knew the floating fuel contained chlorinated VOCs, Honeywell
21 arranged for the disposal of this material with Thermo Fluids, Inc., a Phoenix-based
22 company, without disclosing the presence of the chlorinated VOCs to Thermo Fluids.

23 92. Thermo Fluids informed Defendant Honeywell that the recovered fuel would be
24 blended with other petroleum products and re-sold. The chlorinated VOC-contaminated jet
25 fuel was, in fact, blended with other petroleum based products and sold to Thermo Fluids'
26 customers as industrial fuel.

1 93. Defendant Honeywell knew the recovered fuel contained chlorinated VOCs and knew
2 or should have known that it therefore should be managed as a hazardous waste as required
3 by the Arizona Hazardous Waste Management Act.

4 94. On April 19, 2000, May 15, 2000, June 7, 2000 and June 27, 2000, Defendant
5 Honeywell arranged for the transportation and disposal of floating fuel contaminated with
6 chlorinated VOCs by Thermo Fluids Inc.

7 95. Thermo Fluids Inc. did not have a permit to treat, store or dispose of hazardous
8 wastes as required by the Arizona Hazardous Waste Management Act.

9 96. On April 19, 2000, May 15, 2000, June 7, 2000 and June 27, 2000, Defendant
10 Honeywell shipped hazardous waste to Thermo Fluids Inc. without a hazardous waste
11 manifest.

12 97. On April 19, 2000, May 15, 2000, June 7, 2000 and June 27, 2000, Thermo Fluids
13 disposed of this hazardous waste. Hazardous waste generation fees were not paid to ADEQ
14 for the disposal of this waste.

15 Count 10

16 98. On four separate occasions -- April 19, 2000, May 15, 2000, June 7, 2000 and June
17 27, 2000 -- Defendant Honeywell violated A.A.C. R18-8-262(A) by shipping hazardous
18 waste without a hazardous waste manifest in violation of 40 C.F.R. §262.20(a).

19 Count 11

20 99. On four separate occasions -- April 19, 2000, May 15, 2000, June 7, 2000 and June
21 27, 2000 -- Defendant Honeywell violated A.A.C. R18-8-262(A) by failing to designate on
22 the manifest one facility which is permitted to handle the hazardous waste in violation of 40
23 C.F.R. §262.20(b).

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1 Count 12

2 100. On four separate occasions -- April 19, 2000, May 15, 2000, June 7, 2000 and June
3 27, 2000 -- Defendant Honeywell violated A.A.C. R18-8-262(I)(1) by shipping hazardous
4 waste and failing to submit to ADEQ a copy of the hazardous waste manifest.

5 Count 13

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7 101. On four separate occasions -- April 19, 2000, May 15, 2000, June 7, 2000 and June
8 27, 2000 -- Defendant Honeywell violated A.A.C. R18-8-268 by failing to determine if the
9 hazardous waste had to be treated before it was land disposed in violation of 40 C.F.R.
10 268.7(a)(1).

11 Count 14

12 102. On four separate occasions -- April 19, 2000, May 15, 2000, June 7, 2000 and June
13 27, 2000 -- Defendant Honeywell violated A.A.C. R18-8-268 by failing to submit a written
14 notice to Thermo Fluids Inc. that the hazardous waste did not meet land disposal treatment
15 standards in violation of 40 C.F.R. 268.7(a)(2).

16 Count 15

17 103. Defendant Honeywell violated A.R.S. § 49-931(A) fail to pay hazardous waste
18 generation fees for approximately 3430 gallons of hazardous waste picked up by Thermo
19 Fluids for disposal on April 19, 2000, May 15, 2000, June 7, 2000 and June 27, 2000.

20 Count 16

21 104. On December 31, 2000, Defendant Honeywell violated A.A.C. R18-8-262.(H) by
22 failing to list the volume of hazardous waste disposed of on April 19, 2000, May 15, 2000,
23 June 7, 2000 and June 27, 2000 in its Facility Annual Report.

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1 Count 17

2 105. By burning fuel containing hazardous waste in its on-site boiler without a permit, on
3 at least one occasion, Defendant Honeywell violated 40 C.F.R. §266.101(c)(1).

4 Count 18

5 106. Pursuant to A.R.S. § 49-924.A., Defendant Honeywell is subject to a civil penalty not
6 to exceed \$25,000 per day for each of the 23 separate violations alleged in Counts 10
7 through 17.

8 Count 19

9 107. Pursuant to A.R.S. § 49-931(A)(1) and (D), ADEQ also seeks to recover the
10 hazardous waste generation fees and interest on the unpaid amount Defendant Honeywell
11 should have paid for its disposal of hazardous waste with and by Thermo Fluids, Inc.

12 *Violations of the ADEQ Order*

13 108. Plaintiff realleges and incorporates by reference all allegations set forth in Paragraphs
14 1 through 106 of this Complaint.

15 109. In accordance with Paragraph 16 of the ADEQ Order and its attached Statement of
16 Work ("SOW"), Defendant Honeywell was required to submit, within 60 days of the
17 effective date of the ADEQ Order, a "Research Report" including: (1) a narrative of the
18 work completed [to date], with detailed descriptions of the configuration, operation and
19 historical uses of facilities [at the Facility]; (2) detailed maps, figures and tables depicting
20 layout, locations and uses of the facilities [at the Facility]; and (3) any recommendations for
21 investigation of these areas. Section 3.1 of the SOW required Defendant Honeywell to
22 "compile or format information in existence" specifically regarding dry wells, sumps and
23 "any reported incidents, spills or leaks involving the release of hazardous substances."
24 Although ADEQ granted Defendant Honeywell an extension to file this Report, the Research
25 Report was required to be submitted in a true, accurate and complete form on December 20,
26 1999.

1 110. Although this was at least the third opportunity Defendant Honeywell had to disclose
2 the 1987-1988 Sump Memo and all related data to ADEQ, and although this type of data was
3 fundamental to the investigation under the ADEQ Order, the Research Report omitted the
4 fact that many of these sumps held, stored or contained chlorinated VOCs prior to the
5 sumps' removal.

6 111. The Research Report stated that the maximum concentration of chlorinated VOCs
7 detected in Well ASE- 20A from January – June 1999 were 2 ppb of TCA; less than 5 ppb of
8 DCE, and 2.1 ppb of TCE. These statements were false.

9 112. The Research Report stated that the results of all groundwater monitoring efforts
10 beneath and downgradient of Area 2 had been provided to ADEQ in a CD-ROM included in
11 a Data Notebook. This statement was false.

12 113. The Research Report stated that the TCE concentrations in the Area 2 wells, as
13 reflected in the Data Notebook, were substantially lower than TCE concentrations observed
14 in the main OU2 plume. This statement is false.

15 114. The Research Report drew the conclusion that the significantly lower concentrations
16 of TCE detected in wells downgradient of Building 202 indicated that Building 202 was not
17 a source of the significant TCE groundwater contamination within the OU2 area. This
18 statement contained a conclusion totally unsupported by the relevant facts.

19 The Research Report described the purpose of the trench and concrete sump system designed
20 and installed by Honeywell in the 1960's and 1970's for test cell Buildings 203 and 204 as a
21 "better water disposal system" than the earlier Air Force drywells. It described the trenches
22 and sumps as collecting "run off water" from the test cells. These statements were false.

23 115. Defendant Honeywell submitted 3 different versions of the Research Report for
24 ADEQ review and approval. ADEQ found each version deficient and unacceptable. The
25 last version was submitted to ADEQ by Defendant Honeywell on November 9, 2001. It was
26 also incomplete and deficient.

1 116. In conjunction with the Research Report, Defendant Honeywell was required by the
2 ADEQ Order to submit a Work Plan for "soils and groundwater investigation of the potential
3 source areas which is based on an analysis of all currently existing data as well as
4 information contained in the Research Report." The Potential Source Areas Work Plan was
5 required to be submitted in a true, accurate and complete form on December 20, 1999.

6 117. Defendant Honeywell submitted numerous versions of the Potential Sources Areas
7 Investigation Work Plan. ADEQ found each version of the Potential Source Areas Work
8 Plan deficient and unacceptable.

9 118. On March 1, 2002, ADEQ informed Honeywell that upon preliminary review, the
10 first phase of work required by the ADEQ Order – to investigate potential source areas –
11 remained incomplete.

12 119. ADEQ and Honeywell soon thereafter reached an impasse regarding what an
13 acceptable Research Report and Potential Source Areas Work Plan would contain. Since
14 ADEQ had little expectation that Honeywell would comply with the ADEQ Order, it took
15 over the work to investigate and characterize potential sources itself.

16 120. The Sump Removal Project data was submitted to ADEQ in a piecemeal fashion
17 between October 6, 2000 and November 22, 2002. ADEQ does not know if it currently has
18 all data and information related to the 1988 sump removal project.

19 **Count 20**

20 121. By failing to disclose all data collected in the 1987-1988 Sump Removal Project in
21 the Research Report, Defendant Honeywell violated a requirement of the ADEQ Order.
22 This violation caused undue delay in performing investigatory and characterization activities
23 for the Facility. This violation began on December 20, 1999, continued at least through
24 November 9, 2001, and may well continue to date. The period December 20, 1999 to
25 November 9, 2001 is 690 days.

26 ///

1 Count 21

2 122. By failing to disclose that chlorinated VOCs were found in the floating fuel in 1999 in
3 the Research Report, Defendant Honeywell violated a requirement of the ADEQ Order.
4 This violation caused undue delay in performing investigatory and characterization activities
5 for the Facility. This violation began on December 20, 1999, continued at least through
6 November 9, 2001, and may well continue to date. The period December 20, 1999 to
7 November 9, 2001 is 690 days.

8 Count 22

9 123. By misrepresenting the purpose of the trench and concrete sump waste collection
10 systems for Buildings 203 and 204 in the Research Report, Defendant Honeywell violated a
11 requirement of the ADEQ Order. This violation caused undue delay in performing
12 investigatory and characterization activities for the Facility. This violation began on
13 December 20, 1999, continued at least through November 9, 2001, and may well continue to
14 date. The period December 20, 1999 to November 9, 2001 is 690 days.

15 Count 23

16 124. By misrepresenting the maximum concentrations of chlorinated VOCs located in the
17 groundwater beneath the Facility, Defendant Honeywell violated a requirement of the ADEQ
18 Order. This violation caused undue delay in performing investigatory and characterization
19 activities for the Facility. This violation began on December 20, 1999 and continued at least
20 through, November 9, 2001, and may well continue to date. The period December 20, 1999
21 to November 9, 2001 is 690 days.

22 Count 24

23 125. By certifying that the data, analysis and information contained in or incorporated by
24 reference into the Research Report was true, accurate and complete that it knew was false,
25 Defendant Honeywell violated a requirement of the ADEQ Order. This violation began on
26

1 December 20, 1999, continued at least through November 9, 2001, and may well continue to
2 date. The period December 20, 1999 to November 9, 2001 is 690 days.

3 **Count 25**

4 126. Defendant Honeywell submitted an inadequate and incomplete Potential Source
5 Areas Investigation Work Plan. Submission of an inadequate and incomplete Potential
6 Source Areas Investigation Work Plan is a separate violation of the ADEQ Order. This
7 violation began on December 20, 1999, continued at least through March 1, 2002, and may
8 well continue to date. The period December 20, 1999 to March 1, 2002 is 802 days.

9 **Count 26**

10 127. Pursuant to A.R.S. § 49-287(I), Defendant Honeywell is subject to a civil penalty, not
11 to exceed \$5,000, for each violation for each day the violation of the Order occurred or the
12 failure to comply with the Order continued as alleged in Counts 20 through 25.

13 **WHEREFORE**, Plaintiff, State of Arizona prays for judgment as follows:

- 14 1. Assessing civil penalties pursuant to A.R.S. § 49-1013(D) against Defendant
15 Honeywell in an amount not to exceed \$10,000 per day per violation for each UST violation;
16 Assessing civil penalties pursuant to A.R.S. § 49-924.A. against Defendant Honeywell in an
17 amount not to exceed \$25,000 per day, per violation for each hazardous waste violation;
- 18 2. Assessing civil penalties pursuant to A.R.S. § 49-287(I) in an amount not to exceed
19 \$5,000 for each violation for each day the violation of the Order occurs or the failure to
20 comply with the Order continues;
- 21 3. Awarding Plaintiff an amount equal to the unpaid amount, plus interest, Defendant
22 Honeywell should have paid for its disposal of hazardous waste with and by Thermo Fluids,
23 Inc. in accordance with A.R.S. § 49-931(A)(1) and (D);
- 24 4. Awarding Plaintiff its taxable costs, including attorneys' fees, and costs of litigation;
25 and
- 26 5. Granting such other relief as the Court deems just and proper.

1 DATED this 9th day of July, 2004.

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3 TERRY GODDARD
Attorney General

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6 NANCY A. MANGONE
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VERIFICATION

STATE OF ARIZONA)
) ss.
County of Maricopa)

Shannon M. Davis, being first duly sworn upon her oath, deposes and says:


1. That I am the Director of the Arizona Department of Environmental Quality, Waste Programs Division, and have been delegated the authority to verify Complaints by the Director of the Department.

2. That I have read the foregoing Complaint and am familiar with the facts therein stated and alleged; that I have read the same and know the contents thereof; and that the same are true of my own knowledge in substance and in fact.



Shannon M. Davis, Director
Waste Programs Division
Arizona Department of Environmental Quality

SUBSCRIBED AND SWORN to before me this 9th day of July, 2004.



Notary Public

My Commission Expires: _____

